

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

JOHNATHON FOWLER,)	CASE NO.
)	
Plaintiff,)	JUDGE
)	
v.)	<u>NOTICE OF REMOVAL OF CIVIL</u>
)	<u>ACTION</u>
PREMIER CC, INC.)	
and)	
)	
DISPATCH EXPRESS, INC.)	
)	
and)	
)	
ANTHONY URSO)	
)	
and)	
)	
KARRIE URSO,)	
)	
Defendants.)	

TO: THE UNITED STATES DISTRICT COURT FOR THE EASTERN
DISTRICT OF MISSOURI, EASTERN DIVISION

Defendants Premier CC, Inc., Dispatch Express, Inc., Anthony Urso and Karrie Urso, by and through their undersigned counsel, hereby give notice of removal of this lawsuit from the Circuit Court of St. Louis County, Missouri, 21st Judicial Circuit, to the United States District Court for the Eastern District of Missouri, Eastern Division, and respectfully submit to this Honorable Court:

1. On or about April 18, 2017, Plaintiff Johnathon Fowler filed an action in the Circuit Court of St. Louis County, Missouri, 21st Judicial Circuit, entitled *Johnathon Fowler v. Premier CC, Inc., et al.*, Case No. 17SL-CC01425. A copy of the *Summons* and *Complaint* was served on the corporate defendants on or about April 26, 2017. A true copy of the *Summons and*

Complaint is also attached hereto. No other pleadings have been filed, entered, served or issued upon Defendants or by Defendants in this matter.

2. This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it is filed within 30 days of receipt of the *Complaint* by Defendants.

3. Plaintiff's *Complaint* asserts overtime claims under the federal Fair Labor Standards Act, 29 U.S.C. §207. *See Complaint* at ¶1 ("This is a lawsuit filed by Plaintiff to recover unpaid overtime wages, liquidated damages, attorneys' fees and costs...pursuant to the Fair Labor Standards Act"); ¶4 ("The FLSA authorizes court actions by private parties to recover damages for violation of the FLSA's wage and hour provisions. Jurisdiction over Plaintiff's FLSA claims is based on 29 U.S.C. §216(b)"); COUNT I ("Violation of the Fair Labor Standards Act of 1938"); and COUNT III ("Retaliation in Violation of the FLSA").

4. Under 29 U.S.C. §216(b), the United States District Courts have original jurisdiction over actions under the Fair Labor Standards Act. As a result -- and as confirmed by the Supreme Court in Breuer v. Jim's Concrete of Brevard, Inc., 538 U.S. 691, 693 (2003) -- the United States District Court for the Eastern District of Missouri, Eastern Division, has jurisdiction over Plaintiff's FLSA claims pursuant to 29 U.S.C. §216(b) without regard to the amount in controversy or diversity of the parties, and this action may be removed to this Court pursuant to 28 U.S.C. §§1331, 1367(a), 1441 and 1446, as well as 29 U.S.C. §216(b).

5. In addition, all of Plaintiff's claims -- including his state law claim pursuant to Missouri's Minimum Wage Law (MMWL) -- are subject to removal based on the Court's diversity jurisdiction. Specifically, Defendants Anthony Urso and Karrie Urso are all citizens of Illinois. Premier CC, Inc. ("Premier") is an Illinois company, with its headquarters and principal place of business in Illinois. Therefore, Premier is not a citizen of the State of Missouri.

According to Plaintiff, the last remaining defendant – Dispatch Express, Inc. – is a “single integrated enterprise [with Premier CC, Inc.] for purposes of the FLSA and MMWL.” *Complaint* at ¶10. Because Plaintiff contends Dispatch Express, Inc. is a single integrated enterprise with Premier CC, the Court should disregard Dispatch Express as a separate Missouri company and, consistent with Plaintiff’s contention, treat it as part of Premier – which has its headquarters and principal place of business in Illinois.

6. The amount in controversy in this case exceeds \$75,000, exclusive of interest and costs. Plaintiff earned approximately \$35,000 per year and was terminated in February 2017. If this case proceeds to trial in June 2018, Plaintiff’s lost wages will exceed \$52,500. Because Plaintiff has requested liquidated damages, his claim would be doubled to \$105,000. Plaintiff has also requested emotional distress damages and attorney fees -- which could reasonably be expected to exceed \$25,000 and \$50,000, respectively-- resulting in an amount in controversy well in excess of the \$75,000 threshold.

7. Thus, the requirements of 28 U.S.C. §1332(a) have been met in that the amount in controversy exceeds \$75,000, exclusive of interest and costs, and because this is a civil action between citizens of different states.

8. Alternatively, although Plaintiff’s MMWL cause of action does not allege a federal claim, this Court has supplemental jurisdiction over Plaintiff’s MMWL pendant state law claim pursuant to 28 U.S.C. §§1367(a), 1441(c) and 1446(b).

9. Pursuant to 28 U.S.C. §1391, venue is proper in the United States District Court for the Eastern District of Missouri, Eastern Division, because all or a substantial part of the alleged events and omissions giving rise to Plaintiff’s claims purportedly occurred within this judicial district, because the corporate defendants conduct business within St. Louis County,

Missouri, and because St. Louis County is where the corporate defendants employed Plaintiff. *See Complaint* ¶¶2, 8-9.

10. As required by 28 U.S.C. §1446(d), Defendant has provided written notice of the filing of this *Notice of Removal* to Russell C. Riggan, counsel of record for Plaintiff, and has filed a copy of this *Notice of Removal* with the Clerk of The Circuit Court for St. Louis County, Missouri (21st Judicial District).

WHEREFORE, Defendants request this civil action be removed in its entirety from the Circuit Court of St. Louis County, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division; that this Court assume full jurisdiction of this cause; and that this Court take all further action deemed just and proper.

Respectfully submitted,

BUCKINGHAM, DOOLITTLE & BURROUGHS, LLC

By: /s/Barry Y. Freeman

Barry Y. Freeman (Ohio #0062040)
One Cleveland Center
1375 East Ninth Street, Suite 1700
Cleveland, OH 44114
Telephone: 216.621.5300
Facsimile: 216.621.5440
bfreeman@bdblawn.com

By: /s/Robert A. Kaiser

Robert A. Kaiser (#31410MO)
ARMSTRON TEASDALE LLP
7700 Forsyth Boulevard, Suite 1800
St. Louis, MO 63105
Telephone: 314.621.5070
Facsimile: 314.621.2261
rkaiser@armstrongteasdale.com

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2017, a true and correct copy of the foregoing *Notice of Removal of Civil Action* was served on Russell C. Riggan, Esq., Attorney for Plaintiff, via the Court's electronic filing system.

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